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(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38353, 38354, July 28, 1977]

§ 10.65 Hearings.

(a) *In general.* An Administrative Law Judge will preside at the hearing on a complaint furnished under § 10.54 for the disbarment or suspension of a practitioner. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under § 10.76(g) will be conducted *de novo*.

(b) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him, he shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make his decision against the absent party by default.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977; 59 FR 31528, June 20, 1994]

§ 10.66 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the disbarment or suspension of attorneys, certified public accountants, and enrolled agents. However, the Administrative Law Judge

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shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 10.67 may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Director of Practice shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he deems proper.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

[31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13206, Aug. 19, 1970; 42 FR 38354, July 28, 1977]

§ 10.67 Depositions.

Depositions for use at a hearing may, with the written approval of the Administrative Law Judge be taken by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days' written notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be

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taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

§ 10.68 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy thereof will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a)).

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

§ 10.69 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge prior to making his decision, shall afford the parties a reasonable opportunity to submit proposed findings

and conclusions and supporting reasons therefor.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

§ 10.70 Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of disbarment, suspension, or reprimand or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Director of Practice and shall transmit a copy thereof to the respondent or his attorney of record. In the absence of an appeal to the Secretary of the Treasury, or review of the decision upon motion of the Secretary, the decision of the Administrative Law Judge shall without further proceedings become the decisions of the Secretary of the Treasury 30 days from the date of the Administrative Law Judge's decision.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

§ 10.71 Appeal to the Secretary.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary of the Treasury. The appeal shall be filed with the Director of Practice in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the Director of Practice, he shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director, he shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director of Practice shall transmit the